



Industrial Telecommunications Association, Inc.

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

September 23, 1996

RECEIVED

SEP 23 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: PR Docket No. 93-144 (Licensing of 800 MHz  
SMR Systems); *Ex Parte* Statement

Dear Mr. Caton:

The Industrial Telecommunications Association, Inc. has, this date, submitted the enclosed written *Ex Parte* statement to Michele Farquhar, Chief of the Wireless Telecommunications Bureau.

In accordance with Section 1.1206 of the Commission's rules, I am filing an original and one copy of this *Ex Parte* statement with the Secretary's office for inclusion in the above-referenced docket.

Sincerely,

*Frederick J. Day*

Frederick J. Day  
Executive Director,  
Government Relations

Enclosures

**TELFAC**

Telephone Maintenance Frequency  
Advisory Committee

No. of Copies rec'd 021  
List A B C D E

**CICS**

Council of Independent  
Communication Suppliers

Main Office: 1110 North Glebe Road • Suite 500 • Arlington, Virginia 22201 • (703) 528-5115 • FAX (703) 524-1074  
Branch Office: 1270 Fairfield Road • Suite 33 • Gettysburg, Pennsylvania 17325 • (717) 334-0537 • FAX (717) 334-9602

EX PARTE OR LATE FILED



Industrial Telecommunications Association, Inc.

September 23, 1996

DOCKET FILE COPY ORIGINAL

Michele Farquhar, Esq.  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

RECEIVED

SEP 23 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Re: PR Docket No. 93-144; Licensing of  
800 MHz Wide-Area Radio Systems  
Ex Parte Filing**

Dear Ms. Farquhar:

The Industrial Telecommunications Association, Inc., hereby files this *ex parte* statement regarding the "consensus position" developed by various participants in the above-referenced proceeding.

**Consensus Position**

The consensus position has been a prominent topic of discussion among various elements of the Specialized Mobile Radio community. It has the support of the American Mobile Telecommunications Association, Inc. ("AMTA"), SMR WON, the Personal Communications Industry Association ("PCIA") and Nextel Communications, Inc.

The key element of the consensus position is a pre-auction, channel-by-channel, Economic Area-by-Economic Area settlement process for the "lower block" of 230 channels in the 800 MHz band.

To this point, private industrial licensees have not played a significant role in the consensus position discussions. However, there are more than 3,450 industrial and other non-commercial systems licensed on the General Category channels. The licensees of these systems have a clear interest in the consensus position. For this reason, we feel compelled to elaborate and expand upon ITA's formal comments in this proceeding.

... / ...

**TELFAC**

Telephone Maintenance Frequency  
Advisory Committee

**CICS**

Council of Independent  
Communication Suppliers

Main Office: 1110 North Glebe Road • Suite 500 • Arlington, Virginia 22201 • (703) 528-5115 • FAX (703) 524-1074  
Branch Office: 1270 Fairfield Road • Suite 33 • Gettysburg, Pennsylvania 17325 • (717) 334-0537 • FAX (717) 334-9602

Michele Farquhar, Esq.  
September 23, 1996  
Page 2 of 4

### ITA's Comments

In concert with the Telephone Maintenance Frequency Advisory Committee ("TELFAC"), ITA filed Comments in PR Docket No. 93-144 on February 15, 1996 and Reply Comments on March 1, 1996.

In these filings, ITA urged the Commission to recognize that there are legitimate and pressing requirements for spectrum to accommodate the needs of private non-CMRS licensees. ITA pointed out that: (1) the 150 General Category channels are used for purposes other than SMR operations, and (2) private non-SMR licenses account for one-third of the total number of systems licensed on the General Category channels.

### ITA's Views on the Consensus Position

As ITA understands the consensus position, the desired result is to reach a "settlement" among all entities licensed to operate on a given channel. The form of the settlement would be a buy-out, joint venture, partnership or similar arrangement. The settlement might give rise to a single licensee in an EA, or the settlement participants might agree to partition the channel. If the channel is partitioned, each settlement participant would have authority to operate on the channel within a designated geographic area.

ITA is not opposed to adoption of the consensus position insofar as it affects small SMR systems. The consensus position may offer some benefit to industrial incumbents licensed on the General Category channels who have an interest in cohabiting with commercial interests. The consensus position may not undermine the interests of industrial licensees, provided there can be some mechanism to allow industrial users the flexibility to modify or expand their coverage areas as operational requirements change.

We understand the motivation underlying the consensus position. If implemented, it would accommodate the interests of smaller SMR licensees who may not have the wherewithal to participate in auctions. In that sense, the consensus position represents a potentially useful solution to the plight of smaller SMR systems.

### Incompatibility of Auctions and the 800 MHz Band

In ITA's view, the real problem derives from the fact that, with the abundance of radio systems already licensed and operating at 800 MHz, this frequency band does not provide a suitable environment for spectrum auctions. Further, it is questionable whether auctions at 800 MHz comply with the expressed intent of Congress.

We note the following:

1. Congress expressly dictated that the auctions authority "should not affect the manner in which the Commission issues licenses for virtually all private services." [Conference Report accompanying the Omnibus Budget Reconciliation Act of 1993, p. 253.]
2. Congress anticipated there would be only "limited cases in which competitive bidding would be appropriate and in the public interest." [Conference Report at 253.]
3. Congress intended the auctions authority to be used "only when there are mutually exclusive applications for an initial license." [Conference Report at 253.]
4. When adopting the auctions authority, Congress directed the Commission to implement and apply the auctions authority "without administrative or judicial delays." [Conference Report at 254.]

Based on the above expressions of Congressional intent, ITA believes the Commission will be overstepping its statutory authority if it uses auctions to assign licensing rights to the limited amount of "white space" available in the 800 MHz band.

### Conclusion

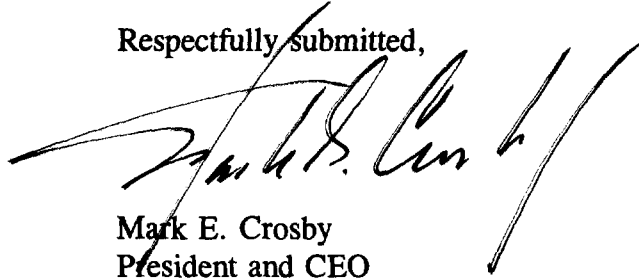
The consensus position represents a practical solution to some of the problems affecting small SMR systems. Insofar as the consensus position benefits smaller SMRs, ITA is supportive. ITA is of the opinion that the consensus position, as outlined in the various pleadings submitted to the Commission, will not harm the more than 3,450 industrial and other non-commercial systems licensed on the General Category channels.

From ITA's perspective, it would be far preferable for the Commission to limit the use of auctions to spectrum being made available for initial licenses and which does not involve the private services.

Michele Farquhar, Esq.  
September 23, 1996  
Page 4 of 4

If the Commission were to refrain from applying auctions to the General Category channels, it would allow the industry to develop a consensus plan that is truly responsive to the present and future needs of all users of the General Category channels, including the licensees of vital industrial, business and public safety systems. Such an approach would have the additional benefit of being fully compliant with the unmistakable intent of Congress.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark E. Crosby", with a large, sweeping flourish extending to the right.

Mark E. Crosby  
President and CEO

cc: Jackie Chorney, Esq.  
Rudy Baca, Esq.  
David Siddall, Esq.  
Suzanne Toller, Esq.  
Rosalind K. Allen, Esq.  
David Furth, Esq.  
Office of the Secretary